

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

ADAM CHARLES SPANKE,

Defendant-Appellant

UNPUBLISHED

May 6, 2008

No. 277203

Presque Isle Circuit Court

LC No. 05-092244-FC

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant pleaded guilty of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1), and was sentenced to five to ten years' imprisonment, with credit for 365 days served. Defendant thereafter filed a motion for resentencing, which was denied. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts there was no evidence the minor victim suffered bodily harm or was subjected to terrorism so as to support the trial court's scoring of 25 points for OV 2. Since defendant's crime occurred before the 1999 legislatively enacted sentencing guidelines, the prior judicial sentencing guidelines were applied to calculate his sentence. MCL 769.34(2); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). Under those guidelines, OV 2 was to be scored 25 points if the victim suffered "bodily injury" or was subjected to "terrorism." Michigan Sentencing Guidelines (2d ed, 1988), p 26. Those guidelines define "terrorism" as "conduct that is designed to increase substantially the fear and anxiety the victim suffers during the offense." *People v Kreger*, 214 Mich App 549, 552; 543 NW2d 55 (1995).

This Court reviews the trial court's application of the sentencing guidelines de novo but reviews a preserved challenge to the scoring of a sentencing variable for an abuse of discretion. *People v Cook*, 254 Mich App 635, 638; 658 NW2d 184 (2003); *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "Scoring decisions for which there is any evidence in support will be upheld." *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

The evidence reflects that the victim was seven years old at the time of the crime and that she was alone with defendant before and after the sexual assault. During the assault, which included forced digital penetration and forced fellatio, defendant threatened to hurt the victim and her family with a knife if she tried to get away or if she told anyone what he had done.

Defendant also pulled the victim's hair and punched her in the back and behind the knees, causing her bruising, when she tried to escape the assault.

The foregoing evidence supports the trial court's conclusion that defendant's actions were specifically designed to increase substantially the victim's fear and caused her to suffer bodily injury. Accordingly, relief is not warranted because the court did not abuse its discretion in scoring 25 points for OV 2.

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski